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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,920	07/03/2003	Norikazu Arai	2860.0637-04	5626

22852 7590 06/14/2006

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EXAMINER

CHU, KIM KWOK

ART UNIT	PAPER NUMBER
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2627

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b> 10/611,920	<b>Applicant(s)</b> ARAI ET AL.	
	<b>Examiner</b> Kim-Kwok CHU	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 137-149 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 137-146, 148 and 149 is/are rejected.
- 7) ☒ Claim(s) 147 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on July 3, 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Pri rity under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/487,928.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Drawing Objection***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature of "the third light flux emitted from the third light source enters the objective lens as a divergent light flux" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 137-146, 148 and 149 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 9 of

U.S. Patent No. 6,950,384. Although the conflicting claims are not identical, they are not patentably distinct from each other.

4. With respect to the present claims 137, 148 and 149, the '384 patent's claim 1 has every limitation of the present claims 137, 148 and 149 except the following feature "where the third light flux emitted from the third light source enters the objective lens as a divergent light flux". This is an obvious limitation because a light source such as the '384 patent's inherently emits a divergent light beam instead of a collimated light beam. Since the divergence of the emitted light is fairly parallel, this divergent light can be treated as a parallel light such as in the '384 patent.

5. With respect to the present claim 138, the '384 patent's claim 2 has every limitation of the present claim 138.

6. With respect to the present claim 139, the '384 patent's claim 3 has every limitation of the present claim 139.

7. With respect to the present claim 140, the '384 patent's claim 4 has every limitation of the present claim 140.

8. With respect to the present claim 141, the '384 patent's claim 5 has every limitation of the present claim 141.

9. With respect to the present claims 142 and 143, the '384 patent's claims 1 and 5 has every limitation of the present claims 142 and 143 except the following statement "wherein the objective lens comprises a diffractive structure to correct spherical aberrations of a light flux within NA2 on the first information recording medium and spherical aberrations of a light flux within NA1 on the second information recording medium respectively to become within a diffraction limitation characteristic" as in claim 142 and ""so that spherical aberrations of a light flux within NA3 due to the thickness of the transparent substrate of the third optical information recording medium is corrected within a diffraction limitation characteristic" as in claim 143. These two features are obvious limitations because claim 1 of the '384 claimed that the spherical aberrations on each recording medium are corrected by diffractive portion of the objective lens (page 117, lines

5-9, 27-33). In addition, claim 5 of the '384 claims the spherical aberrations are corrected under numerical aperture NA1, NA2 and NA3 respectively to the second medium, first medium and third medium.

10. With respect to the present claim 144, the '384 patent's claim 6 has every limitation of the present claim 144.

11. With respect to the present claim 145, the '384 patent's claim 7 has every limitation of the present claim 145.

12. With respect to the present claim 146, the '384 patent's claim 9 has every limitation of the present claim 146.

***Allowable Subject Matter***

13. Claim 147 is objected to as being dependent upon rejected claims based on obvious double patenting, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 147, the prior art of record considered as a whole fails to teach or fairly suggest that an optical pickup having a coupling lens to make the third light flux emitted from the third light source to be a divergent light flux to enter the objective lens.

The features indicated above, in combination with the other elements of the claims, are not anticipated by, nor made obvious over, the prior art of record.

14. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kim CHU whose telephone number is (571) 272-7585 between 9:30 am to 6:00 pm, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch, can be reached on (57) 272-7589.

The fax number is:

(571) 273-8300 (for formal communications intended for entry. Or:


(571) 273-7585, (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9191 (toll free).

  
THANG V. TRAN  
PRIMARY EXAMINER

Kim-Kwok CHU

 6/8/06  
Examiner AU2627  
June 8, 2006

(571) 272-7585